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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,971	01/15/2004	Norio Harui	BIOL0070	4262

7590 06/03/2009
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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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06/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/757,971	Applicant(s) HARUI ET AL.	
	Examiner Timothy L. Maust	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-43 is/are pending in the application.
- 4a) Of the above claim(s) 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II, Claims 34-43 in the reply filed on 2/17/09 is acknowledged. The traversal is on the ground(s) that there is substantial overlap between claims 33 and 34. This is not found persuasive because claim 33 defines a device to rotate and dispense a container. Claim 34 doesn't define such a device and further defines rotating the container to achieve solid body rotation. The above claims clearly present different modes of operation as clearly point out in the Office Action dated 2/10/09.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34-36, 38- 41 and 43 are rejected under 35 U.S.C. 102(e) as being anticipated by Vrane (2004/0027914).

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Regarding claim 34-36, 38, 41 and 43, the Vrane reference discloses a method for dispensing a fluid containing substantially uniformly distributed particulates entrained therein, comprising the steps of:

providing a container (18) having a longitudinal axis (see pg 2, col. 1, lines 10-12), rotating the container including a volume of fluid in which is entrained a plurality of particulates (see pg 2, col. 1, lines 14-16) and dispensing the fluid by aspirator (36). Further, the device is capable of aspirating a sample of fluid when the container (18) is static or spinning.

Regarding claims 39 and 40, graphs in Figures 5 and 6 show that the device is capable of maintaining the defined RPMs.

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Schlumberger (6431745).

The Schlumberger reference discloses a method for dispensing a fluid containing substantially uniformly distributed particulates entrained therein, comprising the steps of:

(a) providing a container (10) having a longitudinal axis (see col. 6, line 3), the container including a volume of fluid in which is entrained a plurality of particulates (defined by magnetic particles; see col. 7, line 57 – col. 8, line 6); the container including a member

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(absent further defined structure is defined by the rim of the open top end of container 10), which, when turned over, allows the material to be poured out.

(b) rotating the container in which the fluid is disposed about its longitudinal axis using a rate of rotation that results in the particulates in the fluid tracing a substantially circular pathway (see Figures 3A-3D); and

(c) dispensing the fluid independently of rotating the container, such that dispensing occurs without requiring the container to be rotating (the fluid can only be dispensed when rotation has ended).

Regarding claims 36 and 41, merely repeating the above steps is carried out by rotating and dispensing multiple containers (10) as shown in Figure 4.

Regarding claim 37, see Figure 3D.

Regarding claim 38, see Figure 3A.

Regarding claims 39 and 40, the revolutions per minute is dependent upon the control unit (40) controlling stepper motor (30).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlumberger in view of Salmon et al.

The Schlumberger reference discloses the invention substantially as claimed (discussed supra), including rotating the container via stepper motor (30), but doesn't disclose matching frequency and phase of the motor to the rate of container rotation to reduce pulsing when dispensing fluid. The Salmon et al. reference discloses a micro-stepper motor that offers an improvement over stepper motors in that it allows a shaft to be held at an indefinite number of positions by controlling phase and frequency. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Schlumberger device to have micro stepper motor controlled system in view of the teachings of the Salmon et al. reference in order to improve over conventional stepper motors by allowing a shaft to be held at an indefinite number of positions by controlling phase and frequency.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vrane in view of Salmon et al.

The Vrane reference discloses the invention substantially as claimed (discussed supra), including rotating the container via motor (16), but doesn't disclose matching frequency and phase of the motor to the rate of container rotation to reduce pulsing when dispensing fluid. The Salmon et al. reference discloses a micro-stepper motor that offers an improvement over stepper motors in that it allows a shaft to be held at an indefinite number of positions by controlling phase and frequency. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Vrane device to have micro stepper motor controlled system in view of the teachings of the Salmon et al. reference in order to improve over conventional stepper motors by allowing a shaft to be held at an indefinite number of positions by controlling phase and frequency.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of record pertains to various devices, similar to Applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Mon. - Thur. 7:00-5:30pm.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy L Maust/
Primary Examiner
Art Unit 3751

6/2/09